

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Hearing Date: March 8, 2022

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

96 Wythe Acquisition, LLC

Debtor.

Chapter 11
Case No. 21-22108-RDD

96 Wythe Acquisition, LLC

Plaintiff,

Adversary Proceeding No. 22-07002-RDD

v.

Benefit Street Partners Realty Operating
Partnership, L.P.,

**APPENDIX IN SUPPORT OF PARTIAL
MOTION TO DISMISS**

Defendant.

Benefit Street Partners Realty Operating Partnership, L.P. (“Benefit Street”, or “Lender”) files this Appendix in support of its Motion to Dismiss (the “Motion”) filed contemporaneously herewith. These documents constitute either (a) charts summarizing allegations in the state court and adversary proceeding or (b) state court filings or transcripts, which are publicly available. The inclusion of these exhibits is proper under Federal Rule of Civil Procedure 12(b)(6) without the need to convert this motion to one for summary judgment, as the exhibits constitute “documents that make up the record before [the Court], as well as those contained in the record before the [state court],” and thus are reviewable “without needing to convert the motion to one for summary judgment.” *In re Assante*, 470 B.R. 707, 711 (Bankr. S.D.N.Y. 2012).

The documents appended include:

1. A chart comparing the allegations in the Adversary Proceeding and State Court complaints;
2. A chart showing the additional allegations in the Adversary Proceeding complaint;
3. The state court Foreclosure Answer;
4. The state court Summary Judgment Order;
5. The state court Appellate Decision;
6. Benefit Street’s Brief for Plaintiff-Appellant;
7. Defendant-Respondent’s Appellant Brief;
8. Reply Brief for Plaintiff-Appellant;
9. Excerpt of Transcript of Hearing in Case No. 21-22108 from March 2, 2021, pending before the United States Bankruptcy Court for the Southern District of New York; and
10. Excerpt of Transcript of Hearing in Case No.653396/2019 from February 18, 2021, pending before the Supreme Court of the State of New York, County of New York.

[SIGNATURES OF COUNSEL ON FOLLOWING PAGE]

Respectfully submitted, this 7th day of February, 2022.

NELSON MULLINS RILEY &
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/s/ Lee B. Hart

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